IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.318 OF 1997

Diocesan Society of Education,
having its office at Bishop's
House, Altinho, Panaji,Goa,
represented by its Secretary
Fr. Tony Salema, residing at
Bishop's House,
Panaji, Goa ... PETITIONER

VERSUS

1. State of Goa, through
   the Chief Secretary,
   having its office at
   Secretariat,
   Panaji, Goa;

2. Director of Education,
   Government of Goa,
   having its office at
   Directorate of Education,
   18 June Road,
   Panaji, Goa;

3. Mrs. Sabina Martins,
   resident of St.Inez, Opp.
   St.Ines Cemetery,
   Panaji, Goa;

4. Miss Karla Pinto,
   Teaching in St.Xavier
   Higher Secondary School,
   St. Xavier Higher
   Secondary School,
   Mapusa, Goa ...RESPONDENTS.

Mr. M.B. D'Costa and Mr. J.A. Lobo, Advocates for the Petitioner.

Mr. H.R. Bharne, Government Advocate for Respondents No.1 and 2.

Mr. S.S. Kantak and Ms Rakhi Chodankar, Advocates for Respondent No.3.

Mr. S.M. Singbal, Advocate for Respondent No.4.

CORAM : S.J. VAZIFDAR &
P.V. HARDAS,JJ.

Date of reserving the Judgment: **26th March,2003.**

Date of pronouncing the Judgment: **3rd April, 2003.**

J U D G M E N T (Per **S.J. VAZIFDAR,J.**)

The petition impugns the directions issued in letters dated 30th August 1994, 24th October 1994, 8th/9th November 1995 and an Order dated 20th February 1997 insofar as they pertain to the post of a Chemistry teacher. The Petitioner also seeks a Writ of Mandamus directing Respondent No.2 to grant approval in respect of the said post and to disburse the arrears of grant-in-aid in respect of salary grants for the teachers appointed in the subject of Chemistry for the years 1995-96, 1996-97 and thereafter.

2. Respondent No.2 is the Director of Education. Respondent No.3, Mrs. Sabina Martins, is a Teacher who the Petitioner was directed to reinstate by the said Order dated 20th February, 1997.

3. By the impugned letters dated 30th August 1994 and 24th October 1994, Respondent No.2 permitted the Petitioner to fill up various posts

including the post of a teacher for the subject of Chemistry for the concerned years provided the Teachers appointed during the previous year were continued, if they so desired. The Petitioner has impugned this condition in the said letters.

4. By the impugned letter dated 8/9th November 1995, Respondent No.2 informed the Petitioner that the stand taken by the Petitioner to refuse employment to Mrs. Sabina Martins was not correct and instructed the Petitioner to reinstate her as a teacher within fifteen days. The Petitioner having failed to do so, Respondent No.2 passed the impugned Order dated 20th February 1997.

5. For the academic year 1993-94, the Petitioner sought permission to appoint three teachers for one year. Advertisements were issued in the newspapers to fill the vacancy for the post of a full-time teacher, inter alia, in Chemistry. The advertisement does not specify whether it was a temporary or a permanent vacancy. The teachers were, however, appointed for one year only.

6. The Assistant Director of Education by a letter dated 22nd June 1993 permitted the Petitioner to open a IVth Division in Standard XII

Science for the year 1993-94 only. By a letter dated 13th July 1993, the Petitioner was permitted to continue a IVth Division in Standard XI Science during 1993-94 only. By a letter dated 6th July 1993, the Petitioner was permitted to open a Vth Division in Standard XI Science during 1993-94.

Thus, the Divisions were allowed to be opened only for the academic year 1993-94.

7. Similar applications were made for the academic year 1994-95 and similar permissions were granted.

8. By her letter dated 19th June 1993, Respondent No.3 applied to the Petitioner for the post of a full-time Grade I Teacher to teach Chemistry in the Higher Secondary School. By a letter dated 17th August, 1993, the Petitioner appointed Respondent No.3 in the said post for the academic year 1993-94 with effect from 18th August, 1993. Thus, the appointment was specifically for the academic year 1993-94 only.

9. By her letter dated 5th January 1994 addressed to Respondent No.2, Respondent No.3 stated that as there was a vacancy for the said post with

the Petitioner, she applied and was selected for the same; that she was relieved from St. Theresa's High School and requested Respondent No.2 to grant her continuity of service with effect from 2nd July 1987 with all attendant benefits. The letter was routed through the Petitioner. It appears that the then Principal of the Petitioner routinely forwarded the same to Respondent No.2 with the endorsement "forwarded for favourable consideration". Respondent No.2, in turn, by his letter dated 22nd March 1994 addressed to the Petitioner, stated that the migration of Respondent No.3 was approved. Much is sought to be made by the Respondents of these two letters as they, in fact, form the principal basis for the impugned Order dated 20th February 1997.

10. It is further pertinent to note that the permission to continue the IVth Division of Standards XI and XII by Respondent No.2 vide letter dated 15th April 1994 was granted for the academic year 1994-95 only. The Petitioner by a letter dated 11th May 1994 informed Respondent No.3 that the Director of Education had granted permission to create her teaching post "purely on temporary basis" for the academic year 1993-94 and that she was accordingly issued the appointment order dated 17th August, 1993. It was further stated that the

position for the academic year 1994-95 was uncertain and that she would, therefore, be required to re-apply in response to the Petitioner's advertisement if she wished to continue serving with the Petitioner. Pursuant thereto, an advertisement was issued, inter alia, for the said post. General Condition (iii) stipulated that all appointments were subject to Government approval. It is important to note that pursuant thereto, Respondent No.3 applied for the said post.

11. It is clear, therefore, that Respondent No.3 herself knew that her appointment with the Petitioner was only for a limited duration. Further she too proceeded on the basis that she would have to apply afresh for the subsequent year. She left her earlier job obviously for a higher post, but aware of the uncertainty of the new post.

12. Initially the Petitioner did not comply with the condition of continuing, in the first instance, teachers appointed in the previous year if they were prepared to continue. The Respondents' case is that having refused to comply with the directions of the Director of Education, they were entitled to withhold the grant-in-aid to the Petitioner.

13. The Order dated 20th February 1997 refers to the fact that the Petitioner discontinued the appointment of Respondent No.3 from the year 1995-96 onwards despite the N.O.C. for the continuance of the post on the instructions to continue the appointment of the same teachers from 1993-94 onwards in the same posts. The Order also proceeds on the basis that the migration having been recommended by the Petitioner in the case of Respondent No.3, it is to be presumed that she was taken on a permanent basis.

14. Thus, two principal reliefs have been claimed by the Petitioner, namely, for quashing the Order dated 20th February 1997 directing the Petitioner to reinstate Respondent No.3 and directing Respondent Nos.1 and 2 to release the grants for the said post.

15. The Order is unsustainable for the reason that the application for migration was only routed through the Petitioner. It did not absolve Respondent No.2 of his statutory duty to examine the application before approving it. The duty to do so is cast upon Respondent No.2 under Rule 86-B of the Goa School Education Rules, 1986, the relevant part of which reads as under:-

> "86B. **Migration of employee.**- (1) An employee migrating from an aided school to another under a different management shall forward his application to the new post through proper channel as laid down in sub-rule (3) of rule 74. He shall also apply in a specified form, for concurrence of the Director, through proper channel.
>
> (2) The Director may grant his concurrence provided there is no break in service or the break, if any, is condoned under rule 35. "

Rule 86-B provides that the Director "may grant his concurrence". There is nothing to suggest that the Petitioner was bound to either recommend or not to recommend the application. The endorsement of the Principal of the Petitioner on the 2nd Respondent's application is, therefore, of no consequence. It was the duty of the Director to scrutinize the application and to grant his concurrence only if the case warranted the same.

16. Had Respondent No.2 scrutinized the application and the relevant record, he would have found that the post for which Respondent No.3 was appointed by the Petitioner was a temporary post and not a permanent one. This is clear from the letters/permissions we have referred to earlier which establish that the appointment was only for one academic year at a time. In that event, on the basis

of the Order dated 20th February 1997 itself, Respondent No.2 could not have granted the permission. The Order itself states that "the question of approving migration for a temporary vacancy does not arise". Based on this statement itself, it is clear that the approval could not have been granted by Respondent No.2. We do not then see how the Petitioner can be made liable for this act and the consequences thereof.

17. It must also be noted that in her application for migration dated 5th January 1994, the Petitioner did not candidly inform Respondent No.2 that her post with the Petitioner was only for that academic year. It is true that the Principal routinely forwarded the same to Respondent No.2 for favourable consideration without noting this fact. That, however, did not absolve Respondent No.3 of her responsibility to state the correct facts. Nor for that matter did it absolve the Respondent No.2 from his obligation under Rule 86-B.

18. Mr. D'Costa submitted that the Order dated 20th February 1997 was also contrary to Rule 83, as it would, if implemented, have the effect of depriving the Petitioner of appointing a person in a permanent vacancy on probation for two years. He

also invited our attention to the letters of appointment when the Petitioner intended to appoint someone on a permanent post. The terms and conditions are naturally entirely different from those stipulated for a candidate such as Respondent No.3 for a temporary post. In view of what we have already observed, it is not necessary to go into these questions.

19. Mr.Kantak, the learned Counsel appearing on behalf of Respondent No.3, fairly conceded that Respondent No.2 did not have the power or the authority to order reinstatement as was sought to be done by the Order dated 20th February 1997. If Respondent No.3 was aggrieved by the act of the Petitioner in not continuing her in service, which according to her amounted to an illegal termination, it was for her to challenge the same before the Administrative Tribunal. She has not done so. In the circumstances, the impugned Orders dated 8/9th November 1995 and 20th February 1997 are liable to be quashed.

20. This brings us to the next question, namely, whether the Petitioner was bound to follow the directions contained in the letters dated 30th

August 1994 and 24th October 1994. As stated earlier, the Petitioner was granted permission to fill up, inter alia, the posts of various teaching staff including for the subject of Chemistry for the academic year 1994-95 provided "teachers appointed last year on the said posts are continued if they so desire". This was also stated in the impugned letter dated 24th October 1994.

21. The Petitioner by a letter dated 31st January 1995 appointed Respondent No.3 with effect from 20th June 1994 for the academic year 1994-95 only. The appointment was subject to various conditions. Respondent No.3 accepted the letter though with the endorsement that she did not accept the appointment with all the service conditions. She did not, however, specify which of the service conditions she was not agreeable to.

22. By a letter dated 17th August 1995, Respondent No.2 granted the Petitioner permission to continue the posts of teaching staff on regular basis for the academic year 1995-96 sanctioned earlier provided the teachers appointed for the academic year 1993-94 on the said posts are continued if they so desire. Probably due to inadvertence this letter was

not specifically challenged in the Petition. We have, however, proceeded on the footing that it has been as it is identical to the conditions in the letters which have, in fact, been impugned. Despite this condition, Respondent No.3 was not continued by the Petitioner. The Petitioner advertised the said post on 21st June,1996. Respondent No.3, however, did not answer the advertisement or apply for the said post. We will presume that she expected to be reinstated in view of the Order dated 8th/9th November, 1995. However, as we have already held, Respondent No.2 did not have the power or the authority to order reinstatement. Respondent No.3 ought to have taken steps to challenge the same which she did not. Mr. Kantak again fairly stated that Respondent No.3 has, in fact, throughout this time been gainfully employed in another institution. Pursuant to the advertisement, the post was filled up by one Miss Asha D'Souza on 28th June 1996.

23. On 4th September 1996, the said post was made a permanent post but the same condition as to the appointment of the teachers appointed during the earlier years was imposed. The Petitioner advertised the said post on 29th August 1997. It is important to note once again that Respondent No.3 did

not apply for the said post. Respondent No.4, however, applied for the same and was appointed to the said post.

24. It is not necessary for us in this petition to go into the question as to whether the said condition imposed by Respondent No.2 was valid or not in view of the fact that Respondent No.3 as a matter of fact did not answer either of the advertisements issued on 21st June 1996 and 20th August 1997. She has not during all these years challenged the same. She has, in fact, been employed elsewhere. The question, therefore, of the Petitioner having disregarded the directions does not, strictly speaking, arise in the present Petition. The Petitioner has, in fact, filled up the post and has engaged teachers for the same. There are no allegations of **mala-fides** in the appointment of either Miss Asha D'Souza or Respondent No.4 to the said post. In the facts and circumstances of the case, we, therefore, see no reason to deprive the Petitioner of the grant-in-aid.

25. Considering the view that we have taken, it is not necessary for us to quash the said directions contained in the letters dated 30th August

1994 and 24th October 1994.

In the circumstances, the Petition is made absolute in terms of prayers (b) and (c).

S.J. VAZIFDAR,J.

P.V. HARDAS,J.

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